

July 16, 2013, the Commissioner filed an unopposed motion to remand the case pursuant to sentence six of 42 U.S.C. §405(g). (doc. 7.) Specifically, the Commissioner sought to vacate the Appeals Council's December 14, 2012 decision and reinstate the ALJ's favorable determination, on grounds that "good cause" existed because "new evidence" showed that Plaintiff's date last insured was actually December 31, 2014. (*Id.* at 1–2.) The court granted the Commissioner's motion that same day. (doc. 8.) Upon remand, the Appeals Council vacated its previous decision and issued a disability determination that was "fully favorable" to Plaintiff. (docs. 9 at 1; 9-1 at 2–3.)

Plaintiff now moves for the entry of a final judgment in his favor. (doc. 9.) The Commissioner does not oppose Plaintiff's motion. The motion is now ripe for recommendation.

II. ANALYSIS

The Supreme Court has identified two exclusive methods for remanding social security cases under § 405(g). *See Shalala v. Shaefer*, 509 U.S. 292, 296–7 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 97–98 (1991). "The fourth sentence of § 405(g) authorizes a court to enter 'a judgment affirming, modifying, or reversing the decision of the [Commissioner], with or without remanding the cause for a rehearing.'" *Melkonyan*, 501 U.S. at 98 (citing 42 U.S.C. § 405(g)). "[A] sentence four remand requires the district court to enter a decision on the merits before remanding a case to the Commissioner." *Schriner v. Comm'r, Soc. Sec. Admin.*, No. 3:08-CV-2042-N, 2010 WL 2941120, at *15 (N.D. Tex. June 22, 2010), *rec. adopted*, 2010 WL 2944782 (N.D. Tex. July 22, 2010) (citing *Melkonyan*, 501 U.S. at 98).

"Sentence-six remands may be ordered in only two situations: where the [Commissioner] requests a remand before answering the complaint, or where new, material evidence is adduced that was for good cause not presented before the agency." *Shaefer*, 509 U.S. at 297 (citing § 405(g);

Melkonyan, 501 U.S. at 99–100, and n. 2). Under sentence six, “[t]he district court does not . . . rule in any way as to the correctness of the administrative determination. Rather, the court remands” the case for reconsideration if the “new evidence might have changed the outcome of the [] proceeding.” *Melkonyan*, 501 U.S. at 98 ; *McKenzie v. Astrue*, 442 F. App’x 161, 162 (5th Cir. 2011).

Following a sentence six remand, the Commissioner “must return to the district court to ‘file with the court any such additional or modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based.’” *Melkonyan*, 501 U.S. at 98 (quoting 42 U.S.C. § 405(g)). “The district court retains jurisdiction pending remand, and does not enter a final judgment until after the completion of remand proceedings.” *Bookman v. Comm’r of Soc. Sec.*, No. 6:08-CV-1986-ORL-28, 2011 WL 4633094, at *1 (M.D. Fla. Sept. 15, 2011), *rec. adopted*, 2011 WL 5027285 (M.D. Fla. Oct. 5, 2011) (citations omitted). In sum, “[i]mmediate entry of judgment (as opposed to entry of judgment after post-remand agency proceedings have been completed and their results filed with the court) is the principal feature that distinguishes a sentence-four remand from a sentence-six remand.” *Chelette v. U.S. Comm’r of Soc. Sec.*, No. 1:11-CV-1860, 2012 WL 2870842, at *2 (W.D. La. June 12, 2012), *rec. adopted*, 2012 WL 2873635 (W.D. La. July 12, 2012) (citing to *Shaefer*, 509 U.S. at 296–7 and *Istre v. Apfel*, 208 F.3d 517, 520 (5th Cir. 2000)).

Here, the court’s remand order was issued pursuant to sentence six because the Commissioner had not yet answered the complaint and “good cause” existed given the new evidence showing Plaintiff’s actual date last insured. (*See* docs. 7 at 1–2; 8.) No final judgment was entered because the court retained jurisdiction over the case pending the remand proceedings. *See Melkonyan*, 501 U.S. at 98; *Bookman*, 2011 WL 4633094, at *1. Because on remand the

Commissioner's decision was "fully favorable" to Plaintiff, he now urges the entry of final judgment in his favor. (docs. 9-1 at 2-3; 9; 11.) In light of the favorable disability determination, and the fact that the motion is unopposed, there appears to be no need for a detailed analysis of the Commissioner's decision or an in-depth review of the modified findings of fact. Accordingly, Plaintiff's motion for final judgment should be granted.

III. RECOMMENDATION


Plaintiff's *Motion for Entry of Final Judgment*, filed February 28, 2014 (doc. 9), should be **GRANTED**.

SO RECOMMENDED on this 7th day of April, 2014.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of these findings, conclusions and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).


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